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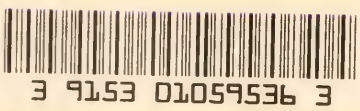


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Bulletin No. 3

State of Connecticut

Workmen's Compensation Commission

# The Certification of Financial Ability of Employers

ISSUED BY
THE BOARD OF COMMISSIONERS
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## PREFATORY NOTE.

This Bulletin is prepared for the assistance and information of employers under the Compensation Act who have under consideration the question of carrying their own risk instead of protecting themselves, and indirectly their employees, by one of the forms of insurance or security provided for in the Act. Its object is to define and explain the position taken by the Commission, with its two-fold duty to employer and employee, for the double purpose of enabling those interested to understand the reasons for the course prescribed by the Commission, and to point out to those desiring to take such action the proper course to pursue. To save repetition, reference is made here to pages 11 and 12 of Bulletin No. 1.

The interpretations of the Act herein contained, which are published at this time for the convenience of the public, represent only the tentative opinions of the Board of Commissioners and are subject to modification. It will be recognized that the Board and the several Commissioners should, in fairness to all parties concerned, decide questions only as they arise and after the parties to the particular controversies have been fully heard.

# THE CERTIFICATION OF FINANCIAL ABILITY OF EMPLOYERS

## TEXT OF SECTION 30 OF PART B.

Sec. 30 of Part B of the Act reads: Insurance of Compensation Liability. Every employer subject to Part B who shall not furnish to the commissioner satisfactory proof of his solvency and financial ability to pay directly to injured employees or other beneficiaries the compensation provided by this act, shall insure his full liability under part B in one or both the following ways: (1) By filing with the insurance commissioner in form acceptable to him security guaranteeing the performance of the obligations of this act by said employer; or, (2) by insuring his full liability under Part B of this act in such stock or mutual companies or associations as are or may be authorized to take such risks in this state, or by such combination of the above-mentioned two methods as he may choose, subject to the approval of the insurance commissioner.

## THE NECESSITY OF SECURING THE PAYMENT OF COMPENSATION TO EMPLOYEES.

The obvious intent of the Compensation Act, Chapter 138, of the Acts of 1913, is to do justice to both employer and employee. For an employer's liability, uncertain in its extent, and which may or may not exist according to the circumstances of the case, there is substituted a fixed obligation to pay a certain series of moderate sums in periodical installments. A law suit, which may go from court to court and last for years, is replaced by a simple procedure calculated to determine the issues with the minimum of expense to both parties.

The manner of securing the employee in any award that may be given to him is radically changed. At common law the employee has no way of securing himself in the payment of possible future damages until the injury happens. He has then, in this state, and generally exercises, the right of immediate attachment, which secures him by tying up the property of his employer at the time that he begins his common law action against him. The result of this is that the employer may be hampered in carrying on his business and is obliged either to submit to a continuing lien, or release the attachment by a bond. This bond, given upon the dissolution of an attachment, under the statute must equal in amount not only the limit of any probable recovery of the plaintiff, but the value of the property which the sheriff is commanded to attach, a sum generally considerably greater than the extreme sum claimed in the writ in the plaintiff's suit. It was accepted only after a Court hearing in which all persons interested had a right to appear and be heard in relation to its amount and sufficiency. In judging as to the sufficiency of the security, the court had in contemplation a period of time which would be normally a short one, as judgment would probably follow for one party or the other within a period of months, or in protracted litigation a very few years. Furthermore, if this bond upon the dissolution of an attachment at any time proved insufficient, there was under the statute ample opportunity to apply for an additional attachment. Under the Compensation Act this right of immediate attachment is taken away, and any law which did not give the employee some substitute for the security of which he is thus deprived would work an obvious injustice.

The Compensation Act provides, therefore, in the section above quoted, that an employer who would take advantage of its provisions shall take certain steps calculated to secure to the employees the satisfaction of any award which may be granted. It is, of course, inevitable that in the future, looking back over a term of years, instances will be found where human foresight has failed and where some employee has been unable to collect his award. The intent of the Act, however, is that this chance shall be reduced to a minimum and that every effort shall be made to avoid a result which would work hardship and injustice to the employee.

It is to be noted in this connection that a refusal on the part of the Commissioner to pass an employer as of sufficient solvency and financial ability under Section 30 of Part B of the Act, is not to be taken as a reflection upon the business standing of the employer. If he had applied for mercantile credit the question would have been, can he meet obligations maturing in thirty,

sixty or ninety days? The obligation to the employee may not fully mature for ten years, and hence a more thorough method of investigating his affairs must be employed, and different principles applied in determining his financial condition. A wholesaler or a lender doing a large amount of business can properly take a risk—so extending credit that the average loss will be small—which an employee, whose award for damages may constitute his all, cannot fairly be called upon to take.

This cardinal principle, that the right of the employee shall not be jeopardized in the administration of the Act, is recognized by the Commission, which has reached its conclusions not only by much direct thought and study, but after consultation with leading men of the state in various lines of activity, a few of whom are quoted in this Bulletin.

## SECURITY FOR COMPENSATION TO BE ATTAINED WITHOUT INJUSTICE TO EMPLOYERS.

While thus recognizing the just demands of the employee, the Commission is not blind to the rights of the employer. He should not be subjected to unjust demands, and the administration of the Act should not throw an undue burden upon industry. It is the intention of the Commissioners, in laying down and carrying into effect the principles upon which they shall act, to perform their duty in such a way as to make the expense of such investigations as light as possible to the employer, and to make only such demands as are in their opinion necessary to attain the result outlined above, namely, the securing to the employees of the payment of awards which may be made. The obvious fairness of this course has appealed not only to the Commission, but to various citizens who have been consulted. A leading financier writes: "It is highly desirable to protect the employee without too far repressing the energies of our people. I can see no fast and hard rules. Each case will furnish its own conditions. It would be much easier to pass judgment on a concrete case than to formulate general rules."

## VARYING CONDITIONS TO BE TAKEN INTO ACCOUNT.

The requirement of fairness does not call for an inflexible rule which shall demand that each employer be required to furnish the same security in kind as every other employer. It does re-

quire that the circumstances of the individual case be taken into account and that an equitable decision be made giving each element its due weight. An employer with a model factory, a low record of casualties, a large surplus, and a history showing competent and successful management, is not to be compelled to furnish the same safeguards as to financial solvency as one with a totally different character and history. It does not follow, however, that because an employer of labor does business in a large way, and has had a successful history, that he is to be favored over a smaller and newer competitor. Any favoritism in this respect, unintentional though it might be, would throw an unjust burden upon a weaker competitor and would subject the administration of the law to just criticism.

## SANITATION, SAFETY AND WELFARE WORK

It should be borne in mind that the fundamental purpose of the Act is not solely to secure to the victims of industrial accidents some pecuniary compensation for their injuries, but that at least an equally useful purpose is to prevent in large measure the occurrence of industrial accidents.

There are employers of labor who have hitherto, at great expense and by the exercise of much care and thought, safeguarded their employees from injury, as by the institution of safety devices, where there was absolutely no selfish or financial inducement for them to do so, because the injuries which might otherwise be received were invariably such as were incident to the employment and any liability for them could be defeated by interposing the defense commonly spoken of as the assumption of risk.

There have been, on the other hand, a probably much larger number of employers who have not taken this trouble or made these expenditures. Those who have undertaken, and who in the future undertake, philanthropic work falling under the heads of factory sanitation, the safeguarding of employees and welfare work will still have the satisfaction of doing something of real benefit to their fellow men, and will at the same time reap a tangible reward, perhaps unexpected, in the form of a real saving in the cost of operation.

These elements will be very carefully considered by the Commissioners in passing upon the ability of any particular concern to carry its own risk. We are also informed by representatives of some of the leading insurance companies that where compen-

sation insurance is written it will be purely on the merit system and each plant will receive such a rate as its individual condition seems to justify.

## MODES OF SECURING THE PAYMENT OF COMPENSATION.

Section 30 of Part B provides for methods of securing the payment of compensation. The most familiar method of course is the insurance of liability in some mutual or stock company. This method is well known and calls for no special consideration at this time. A somewhat similar method of security is furnishing a bond with a proper surety guaranteeing the performance of the obligations under the Act. A third method is the institution of a private system of insurance, in accordance with Section 29 of Part B, under the auspices of the Insurance Commissioner. The remaining method, and the one particularly considered in this Bulletin, arises under the language of Section 30 of Part B, which provides for the furnishing by the employer to the Compensation Commission of "satisfactory proof of his solvency and financial ability to pay directly to injured employees or other beneficiaries the compensation provided by this Act."

## ELEMENTS TO BE CONSIDERED IN DETERMINING SOLVENCY AND FINANCIAL ABILITY.

It is obvious that to determine whether one is solvent in the ordinary sense of the term—as the term is used, for instance, in the Bankruptcy Act—his assets must equal or exceed his liabilities. In order to be of sufficient financial ability to respond to the demands of the Compensation Act there must be a large excess of assets over liabilities. Furthermore, the character of the applicant for the certificate of solvency and financial ability, and his history, must be such as to justify the belief that his business will not only be honestly conducted with a view of doing justice to his employees within the range of his duties under the Act, but will probably be so conservatively and successfully managed that the chance of his inability to pay ten years hence will be reduced to a minimum. Among the controlling elements are, therefore, the hazard of his business, his financial strength, and his personal character.

Another vitally important element will be developed in the answers to the questions which will, in effect, be put to him, what

arrangements have you made to meet your obligations under the Act, what funds have you devoted to that purpose, and how are those funds to be safeguarded for the benefit of future injured employees?

A sound insurance company owes its main strength to the funds which it holds for the protection of the insured. The protection afforded to the employees of one who carries his own risk may depend largely upon the amount of funds which are withdrawn from the ordinary hazards of business and held in such a way as to be applicable only to the payment of losses.

An ideal arrangement is at once to make adequate provision of this nature, and this matter is under consideration by some of the most progressive employers of the state. Another method, where the one just outlined is impracticable, is to make periodical payments into such a trust fund, making the payments of sufficient amounts to cover all reasonable risk, and withdrawing from the fund from time to time such portion of it as may not be needed for this purpose, the question of such need being passed upon by the Commissioner of the District. This method is substantially that of a mutual life insurance company, except that the insurerer and the insured is the same person. In the end the insured pays exactly the cost of insurance, plus the item of expense.

A leading manufacturer writes: "In our case, it would be our purpose, if we carried the risk ourselves, and same was, of course, approved by the Commissioners, to set aside on January 1st, 1914, as a separate bank deposit or fund on interest, an amount equal to 1 per cent. of total pay roll for the previous year and add to this fund either weekly or monthly 1 per cent. of our current pay roll, this fund to be accumulated, held and kept intact for the purpose of paying claims only under the Compensation Act."

As the whole question addressed to the Commissioner is one of sound judgment, it seems proper to consider all of these elements, and, in fact, Section 30 of Part B of the Act contemplates that there may be a combination of the different methods of security there outlined. As is said by a banker and manufacturer: "It seems to me that cases under this section of the law should be left to the discretion and good judgment of the Commissioner."

The president of one of the trust companies of the state says: "My experience in granting credits leads me to believe that there

is no absolute method or way to ascertain the solvency of those seeking it."

## THE PROCEDURE FOR OBTAINING THE CERTIFICATE.

When application is made for a certificate of solvency and financial ability, the applicant is asked to fill out three forms, except in the case of employers of household labor, in which case only two forms need be employed.

**Information as to Hazard.** In order to advise the Commissioner as to the details with reference to the hazard of the particular employment, the employer will fill out whichever one of four forms may be applicable to the employment. These forms are No. 21, "Factory Hazard"; No. 25, "Mercantile, Office and Miscellaneous Hazard"; No. 24, "Contracting and Building Hazard"; and No. 23, "Farm Hazard."

In the case of an employer who does not fall strictly within one of these classifications, he will use the form which most nearly meets his needs, and in any case will supplement the blank with attached sheets—which should be of the same size as the official form and preferably written on one side only—giving any supplemental information which could aid the Commissioner.

**Information as to Financial Standing.** In order to get before the Commissioner the facts as to his financial standing, the employer should apply for and fill out the blank adapted to his particular form of business organization. There are three of these financial forms. Form No. 18 is to be used by Corporations; Form No. 19 is to be used by Individuals and Partnerships. Form No. 20, which is entitled "Household and Farm," is intended, as its title signifies, primarily for individual employers of these two classes; but, in the case of an individual conducting a small business in some other line, this form might be adequate and preferable. In the case of householders, there is no separate hazard form, the essential facts being called for in Form No. 20.

**Provisions for Meeting the Act.** While the Commissioner may pass an employer as of sufficient solvency

and financial ability to respond to his obligations under Part B of the Act without the setting aside of any special fund or providing any substitute security to meet the claims of injured employees, cases where this can be done must, in view of the circumstances, be exceptional. In every case the applicant is asked to fill out another form, No. 26, which states whether or not any special provision has been made for meeting the liability to injured employees, and, if so, what those provisions are. In order to save unnecessary correspondence it would be well to attach to this form supplemental sheets containing detailed, exact statements of what the employer had done or proposed to do in this respect.

Where an employer of labor in several Districts applies for a certificate of financial ability to pay compensation direct, his application is to be filed in each District. Proofs or documents offered by him in support of such application may be filed in any such District, notice of such filing being sent by him to the Commissioners in such other Districts.

All of these statements are confidential and will go before the Commissioner to be considered by him in connection with such other information as may reach him.

In this investigation it is to be remembered that the moving party is the one applying for the certificate. It is for him to go to the Commissioner and make his application, and to "furnish the commissioner satisfactory proof of his financial ability. He must not expect to be reminded of his duty by the Commissioner, and if he fails to obtain a certificate or in some other way authorized by the Act secure his employees, he will lose the benefit of Part B of the Act, and is liable as though he had not accepted it.

## THE EXTENT OF THE RISK TO BE SECURED.

In determining the amount of liability to be secured by the empoyers, tables of hazards, whether based upon theory, upon general experience in the same line of trade, or even the particular experience of the individual employer, are to be considered with this very vital element in mind, viz: The number of employees in almost any concern is not enough to give the doctrine of averages an opportunity to have its effect. It may be that in a certain trade there is one chance in a thousand of a man being injured, and yet the single employee of a certain employer in that line may

suffer that injury, or the six or ten employees of one concern may suffer the injury at once. The risk in a small concern is not distributed over as large a number of cases as in a very large concern, and even in the latter, it is not distributed in the way in which it is over the community at large. It hence follows that the amount to be secured in any given case cannot be ascertained by any fixed rule and must be left to be determined when the facts have been presented to the Commissioner.

A prominent man of affairs and member of the General Assembly which passed the Act writes: "The next question is how to calculate the liability. The rule for testing the solvency of an insurance company will not apply, because an insurance company has a vast aggregate of such liabilities and is subject to the law of average. But the average to which an insurance company carrying a thousand risks is entitled is not applicable to an employer who carries his own risk and no other. It is inconceivable that so many accidents will occur among a thousand risks insured in one company as to raise the number in any year very much above the average, while the individual employer carrying his own risk only is exposed to an accident that will kill or injure half his employees, perhaps more, depending upon the number employed and the concentration of the hazard.

"To illustrate, take the case of a contractor who employs ten men in the erection of a steel frame, a bridge, a smoke stack, caisson work, or the excavation of a tunnel, loading and fulminating cartridges, or other hazardous work, and it is not difficult to imagine an accident that will kill half of them and permanently disable the rest. In that case the possible loss to the employer would be $32,000. There is much to be said in support of the proposition that he should have a surplus equal to the largest possible loss he can sustain. On the other hand, it may be said that the possibility of a total loss is so remote, even in the case of an employer of a small number of men, all exposed to one hazard and that an extreme one, that one-half of $32,000 would be a sufficient reserve or surplus to meet any loss that could happen in one case in a thousand. One-half might be enough for practical purposes, if it were not for the fact that the employer may not succeed in business and that his surplus may within a year or two from the time it is accepted so diminish that he will not continue responsible for the losses he may incur in occupational injuries. That also should be taken into account in all cases and a requirement for a further surplus made to meet that contingency and it should be reviewed from time to time to see that the employer continues solvent within the meaning of the statute, because he may incur losses that he will not satisfy for many years. * * * * * There are reasons

why the requirements should not be reduced one-half, one of which is that if the loss occurs by fire, the wreckage of the plant is never fully covered by insurance. The obstruction to the business involves a further loss and for these and other reasons the solvency of the employer is impaired far beyond the impairment caused by occupational injuries for which he is accountable."

## FURTHER OPINIONS.

A bank president says: "It would seem to me that the safest way to assure the carrying out of the responsibility of an employer to employee in case of an accident would be the guaranty of some surety company. Of course, this would be a hardship on some concerns. Undoubtedly there are a great many companies in this state who could go on for years and years and meet any obligations they would have to assume, still we know of instances right here in this city where manufacturing companies have been exceedingly prosperous and one would never imagine conditions would be such in a few years that they could not meet their obligations. The only real way to protect an employee is to have all companies insured. Strong and weak would have to be on the same basis.

"It would place a great responsibility on one commissioner to have to pass on the financial worth of an employer five or six or ten years hence. To-day he might be able to say a concern was absolutely solvent and indications were for continued success. It would, therefore, seem as though the only really safe course to protect the employee would be a surety bond. It might be possible to check up the employer every year and see if headway was being made, but that would entail a great amount of detail for the commissioner, and it would take a large force to keep it up."

A manufacturer writes: "Your second question [as to how to determine financial ability] is a poser. I have been trying ever since the hearings to figure out how the * * * * company of which I am [an officer] could satisfy your Commission as to our ability to pay so that we might carry our own insurance, and have about come to the conclusion that until such time as these matters are adjusted, and a clear interpretation is put upon the law, and if possible amendments, that we should feel required to insure as we do for our plain liability insurance at the present time."

And another writer says: "The mere fact that an employer proves to you his solvency at a given date is no guarantee that

he can meet the obligations which might fall due at a much later date."

An official of the Michigan Industrial Accident Board writes: "Less than two per cent. of the Michigan employers are carrying their own risk, and less than half of those who apply are given such permission. Our experience of one year has taught us to be extremely careful in giving to any concern the right to make payments direct to injured employees."

## IN CONCLUSION.

The employer is in the position of a prospective debtor; the employee of a prospective creditor. The credit may extend over a period of many years. It is the duty of the employer who seeks a certificate of financial ability to furnish his evidence to the Commissioner, and the Commissioner will receive and give due weight to any relevant matter which fairly tends to show the risk of the employer and his resources, together with proof of what he does or agrees to do in the matter of furnishing a fund with which to respond to the demands which may be made upon him. The results of audits of his books, commercial reports, the opinions of those familiar with his condition, facts bearing upon the way in which he conducts his business, and the way in which his risk is distributed among his employees will receive due consideration. The Commissioners, with all of the facts of which those given are but illustrations, will find whether or not he may carry his own risk.

In the discharge of this most difficult and delicate duty, the Commission asks the aid and co-operation of the employers of the state.

Board of Commissioners,

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